

CA1
IA300
-1998
Y82

Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada


Jurisdictional Responsibilities for Land Resources, Land Use and
Development in the Yukon Territory and Northwest Territories

Yukon First Nations Settlement Areas



Canada

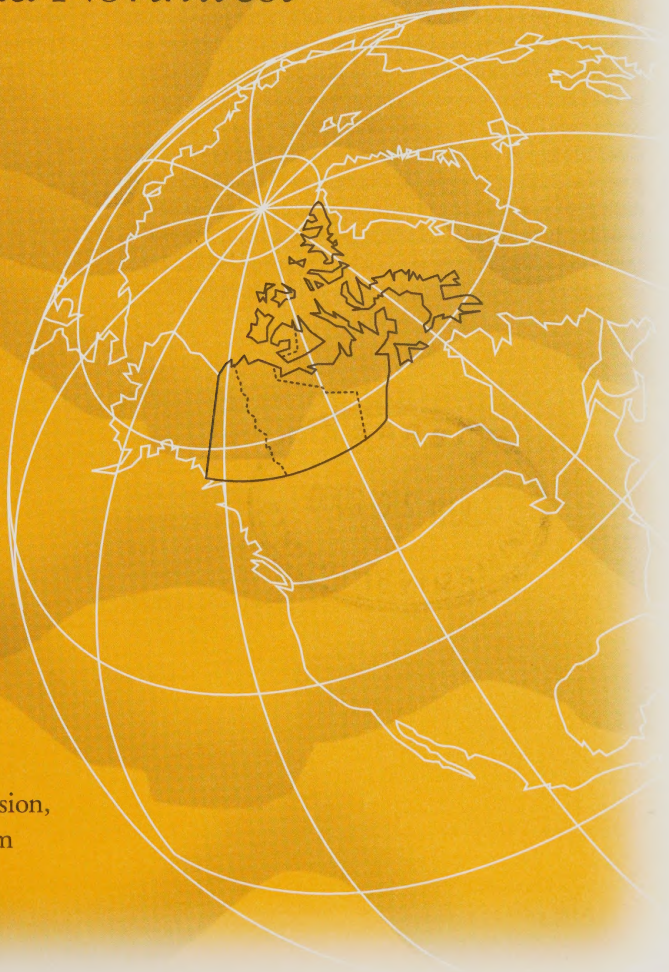
Jurisdictional Responsibilities
Book One



Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

<https://archive.org/details/31761115576787>

*Jurisdictional Responsibilities
for Land Resources, Land Use
and Development in the Yukon
Territory and Northwest
Territories*



Land Management Division,
Northern Affairs Program

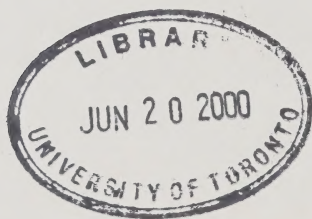
November 13, 1997

The Federal Government through the Minister of Indian Affairs and Northern Development is responsible for administering territorial lands and its resources in the Yukon Territory and the Northwest Territories through various Acts, including the *Territorial Lands Act*, and Regulations, *Yukon Waters Act*, *Canada Petroleum Resources Act*, *Yukon Placer Mining Act*, *Yukon Quartz Mining Act*, etc. Through the Land Claim process, jurisdictional responsibility over certain lands, resources and land uses has been transferred to various First Nations and to Aboriginal groups across the North.

In order to provide a clearer understanding of the jurisdictional framework that is evolving in the Yukon Territory and Northwest Territories, this set of guidelines has been prepared by the Land Management Division concerning "Jurisdictional Responsibilities for Land, Resources, Land Use and Development in the Yukon and Northwest Territories". These guidelines consist of eight (8) chapters, each chapter describes the jurisdictional regime of a particular geographic region and provides the answers as to which governing bodies should be consulted when making application for specific surface and sub-surface leases, permits, licences, or claims, etc.

Michael Fish, Head of Land Transactions, directed and coordinated the compilation of the guidelines which were written by Bill Biggs and edited by Allan Macartney. Bill Biggs is a lawyer having worked as a Director, Treasury Board Secretariat, implementing federal government policies, legislation and reform in the area of real property management. Allen Macartney is a professional writer and editor having over eighteen years of research and writing experience.

Ian Sneddon
Chief, Land Management Division
Environment and Renewable Resources Directorate
Northern Affairs Program
DIAND



This document recognizes the former managers of land resources in both territories and Ottawa, and their staffs, who contributed so much towards the solid framework for land resource management that exists in the North. Their names follow:

Regional Managers of Lands YUKON REGION

Tom Rettallack
Hiram Beaubier
Richard Spencer
Bob Freisen
Angus Robertson
Jack Nichols
Jennifer Guscott
Mark Zrum

Chiefs, Land Management HEADQUARTERS

Bob Goudie
David Gee
Gord Evans
Ian Petrie
Chris Cuddy
Ian Sneddon

Regional Managers of Lands NORTHWEST TERRITORIES REGION

Norm Adams
Joe Ganske
Will Dunlop
Floyd Adlem
Jim Umpherson
Howard Madill
Annette McRobert

IMPORTANT NOTE TO USERS

This document has been prepared for convenient reference only. It has no official sanction. For all purposes of interpreting and applying the law, and the land claims agreements, consult the Acts passed by Parliament and the land claim agreements themselves.

Published under the authority of the
Minister of Indian Affairs and
Northern Development
Ottawa, 1998

QS-8574-000-EE-AI
Catalogue No. R34-7/1-1998E
ISBN 0-662-26949-7

© Minister of Public Works and Government
Services Canada

Cette publication peut aussi être obtenue
en français sous le titre :

*Partage des compétences en matière de ressources
foncières et d'utilisation et d'aménagement des
terres au Yukon et dans les Territoires du Nord-Ouest –
Terres visées par l'Accord-cadre définitif avec le Conseil
des Premières nations du Yukon – Publication n°. un*

Dramatic changes have occurred over the past fifteen years in the jurisdictional framework for land resources, land use and development in the Yukon Territory and the Northwest Territories. These changes are primarily a result of:

- federal legislation revisions;
- the impending creation of Nunavut;
- the finalization of Aboriginal land claim agreements; and
- the devolution of responsibilities from the federal to the territorial governments.

Jurisdictions will further change as these initiatives continue.

Jurisdictional responsibilities are described in this document as of August 31, 1996 for land resources, land use and development within the territories concerning:

- federal lands; and
- lands confirmed for Aboriginal groups under land claim agreement settlement legislation.

These responsibilities differ in some respects between the territories. Within each territory the responsibilities vary based on the particular land claim agreements involved. These variations are considered through the chapters of this document.

In each chapter, the jurisdictional regime for a particular geographic region are described, based on territory, then on the land claim agreements. For convenience, this document combines similar land claim agreements in the chapters relating to the Yukon First Nations and the Northwest Territories First Nations. Differences between the individual land claim agreements are noted where appropriate.

Each chapter dealing with land claim settlement areas, begins with a section on the settlement agreement. This section also describes the roles of administrative bodies (such as surface rights boards) established through the settlement agreements.

The second section of each chapter provides an overview of the region's general jurisdictional categories based on federal and Aboriginal land ownership. For example, there are three categories of land in the Yukon First Nation settlement areas in the Yukon Territory:

1. Settlement Lands to which the First Nations received title under their Land Claim Settlement Agreements;
2. Reserves under the *Indian Act*; and
3. Federal lands.

The remainder of each chapter analyses each region's land ownership categories. For the categories relating to settlement lands and federal lands, the jurisdictional regime is discussed under the following headings:

- Land Ownership;
- Land Use;
- General Access Rights;
- Non-Renewable Resources;
- Forestry and Plants;
- Water Use and Waste Deposit;
- Fish and Wildlife;
- Environmental Assessment; and
- Economic Development.

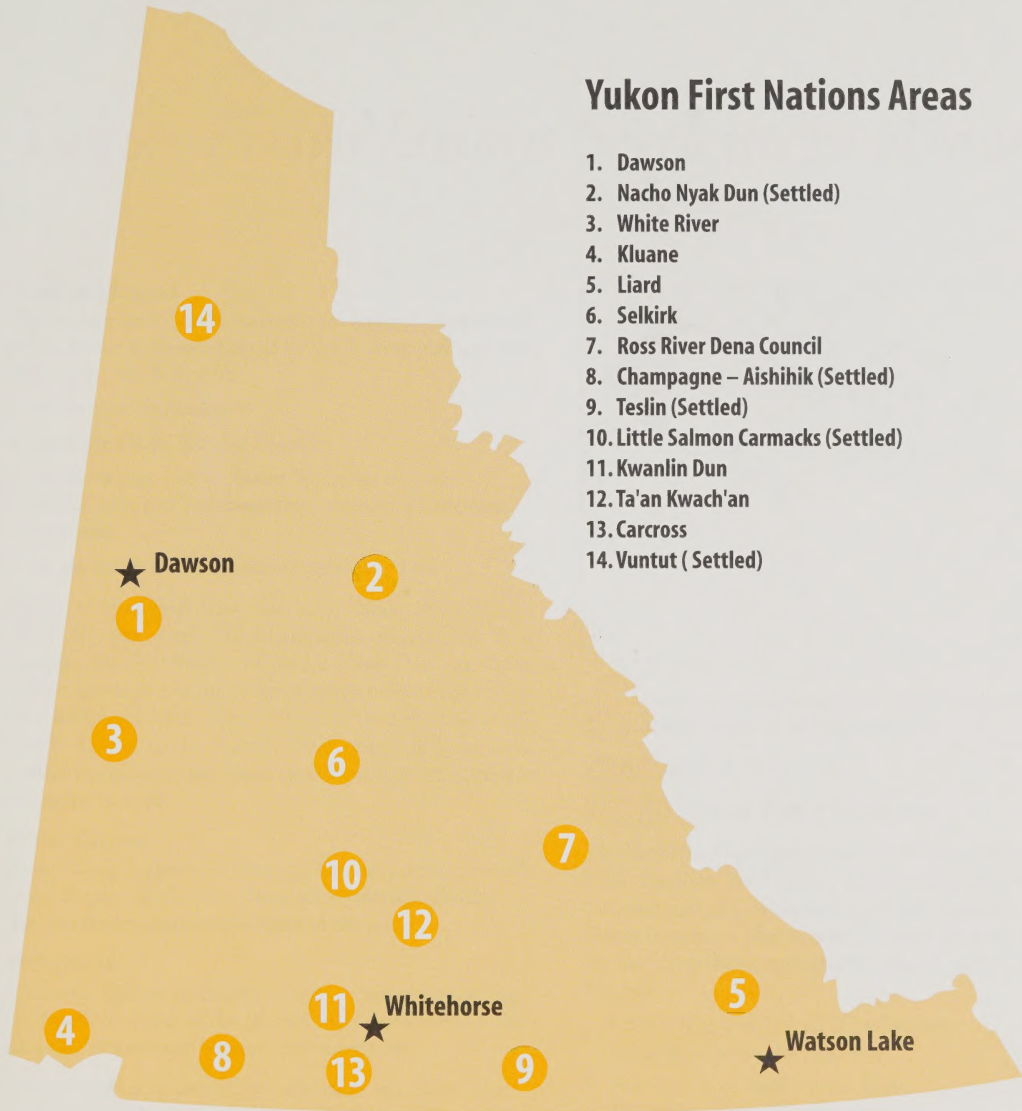
Note: Discussion of lands on reserves under the *Indian Act* is minimal. This text does not specifically examine lands administered by the territorial commissioners, nor does it discuss privately owned lands, or lands acquired by First Nations outside of the land claim settlement process.

Appendix A lists the legislation and the finalized land claim agreements examined in the preparation of this text. Legislation and land claim agreements are current as of August 31, 1996.

Notes and Legend	I-3		
I.1 Settlement Agreements	I-3	I.3.3 General Access Rights	I-14
I.1.1 General Notes	I-3	I.3.3.1 Administrative Bodies	I-14
I.1.1.1 Yukon First Nations	I-3	I.3.3.2 General	I-14
I.1.1.2 <i>Yukon First Nations Land Claims Settlement Act</i>	I-4	I.3.4 Non-renewable Resources	I-14
I.1.1.3 Amendments	I-4	I.3.4.1 Administrative Bodies	I-14
I.1.1.4 Lands Set Aside	I-4	I.3.4.2 General	I-15
I.1.1.5 General Provisions	I-5	I.3.5 Forestry and Plants	I-16
I.1.2 Definitions	I-5	I.3.5.1 Administrative Bodies	I-16
I.1.3 Administrative Bodies	I-6	I.3.5.2 General	I-16
I.1.3.1 General	I-6	I.3.6 Water Use and Waste Deposit	I-16
I.1.3.2 Yukon Land Use Planning Council	I-6	I.3.6.1 Administrative Bodies	I-16
I.1.3.3 Regional Land Use Planning Commissions	I-6	I.3.6.2 General	I-16
I.1.3.4 Surface Rights Board	I-6	I.3.7 Fish and Wildlife	I-18
I.1.3.5 Yukon Water Board	I-7	I.3.7.1 Administrative Bodies	I-18
I.1.3.6 Yukon Development Assessment Board	I-7	I.3.7.2 General	I-18
I.1.3.7 Yukon Heritage Resources Board	I-8	I.3.7.3 Fishery	I-19
I.1.3.8 Fish and Wildlife Management Board	I-8	I.3.7.4 Furbearers	I-19
I.1.3.9 Renewable Resources Councils	I-8	I.3.8 Environmental Assessment	I-20
I.1.3.10 Dispute Resolution Board	I-9	I.3.9 Economic Development	I-20
I.1.3.11 Yukon Geographical Place Names Board	I-8		
I.1.4 Other Aboriginal Peoples	I-8	I.4 <i>Reserves Under the Indian Act</i>	I-20
I.1.4.1 Yukon First Nation Settlement Agreements	I-8		
I.1.4.2 Yukon Transboundary Agreement	I-8	I.5 Federal Lands	I-21
I.2 Jurisdictional Categories	I-9	I.5.1 Land Ownership	I-21
		I.5.1.1 General	I-21
I.3 Settlement Lands	I-10	I.5.2 Land Use	I-21
I.3.1 Land Ownership	I-10	I.5.2.1 Administrative Bodies	I-21
I.3.1.1 Administrative Bodies	I-10	I.5.2.2 Overlapping Rights	I-21
I.3.1.2 Land Quantum	I-10	I.5.2.3 Hydro Projects	I-21
I.3.1.3 Title	I-10	I.5.2.4 Special Management Areas	I-21
I.3.2 Land Use	I-11	I.5.2.5 Land Use Plans	I-22
I.3.2.1 Administrative Bodies	I-11	I.5.2.6 Heritage Sites and Resources	I-22
I.3.2.2 General	I-12	I.5.3 General Access Rights	I-23
I.3.2.3 Waterfront Right of Way	I-12	I.5.4 Non-renewable Resources	I-24
I.3.2.4 Special Management Areas	I-12	I.5.5 Forestry and Plants	I-24
I.3.2.5 Land Use Plans	I-13	I.5.6 Water Use and Waste Deposit	I-24
I.3.2.6 Heritage Sites and Resources	I-13	I.5.6.1 Administrative Bodies	I-24
		I.5.6.2 General	I-24
		I.5.7 Fish and Wildlife	I-25
		I.5.7.1 Administrative Bodies	I-25
		I.5.7.2 General	I-25
		I.5.7.3 Fishery	I-26
		I.5.7.4 Furbearers	I-26
		I.5.8 Environmental Assessment	I-26
		I.5.9 Economic Development	I-27

Yukon First Nations Areas

1. Dawson
2. Nacho Nyak Dun (Settled)
3. White River
4. Kluane
5. Liard
6. Selkirk
7. Ross River Dena Council
8. Champagne – Aishihik (Settled)
9. Teslin (Settled)
10. Little Salmon Carmacks (Settled)
11. Kwanlin Dun
12. Ta'an Kwach'an
13. Carcross
14. Vuntut (Settled)



Yukon First Nations Settlement Areas

Yukon First Nations Settlement Areas

Notes and Legend

This chapter describes the jurisdictional regime in that portion of the Yukon Territory claimed by Yukon First Nations. This area is generally bounded:

- on the west by Alaska;
- on the south by British Columbia;
- on the east by the Northwest Territories and the Gwich'in Yukon Transboundary Agreement settlement area; and
- on the north by the Inuvialuit Settlement Area.

Fourteen Aboriginal land claims by Yukon First Nations affect this area. Only the Champagne and Aishihik First Nations, the First Nation of Nacho Nyak Dun, the Teslin Tlingit Council, and the Vuntut Gwitchin First Nation have final settlement agreements. The rest of the area remains primarily federal lands. Jurisdictional responsibilities there remain unchanged. Agreements and legislation are current as of August 31, 1996.

In this Chapter

Immediately below topic headings, this document notes relevant chapters in the land claims settlement agreements. You will find exceptions described in the text.

Definitions

"Existing" right or agreement: a right or agreement existing on the effective date of the relevant Final Agreement, or the date the relevant land became settlement land.

A **"new"** right or agreement: one that came into effect after the dates described above.

FA: a Yukon First Nation Land Claim Settlement Final Agreement.

GIC: Governor in Council.

Umbrella Final Agreement (UFA): the Umbrella Final Agreement with the Council of Yukon Indians.



1.1 SETTLEMENT AGREEMENTS

1.1.1 GENERAL NOTES

1.1.1.1 YUKON FIRST NATIONS

The Umbrella Final Agreement provides the model for Yukon First Nations land claim settlements. Signed by the Governments of Canada and the Yukon with the Council of Yukon Indians on May 29, 1993, it forms the basis for the following land claim agreements, signed with Yukon First Nations:

- Champagne and Aishihik First Nations
Final Agreement – May 29, 1993
- First Nation of Nacho Nyak Dun
Final Agreement – May 29, 1993
- Teslin Tlingit Council
Final Agreement – May 29, 1993
- Vuntut Gwitchin First Nation
Final Agreement – May 29, 1993

Negotiations continue in land claim settlements for these Yukon First Nations:

- Carcross/Tagish First Nation
- Dawson First Nation
- Kluane First Nation
- Kwanlin Dun First Nation
- Liard First Nation
- Little Salmon/Carmacks First Nation
- Ross River Dena Council
- Selkirk First Nation
- Ta'an Kwach'an Council
- White River First Nation.

1.1.1.2 YUKON FIRST NATIONS LAND CLAIMS SETTLEMENT ACT

The *Yukon First Nations Land Claims Settlement Act*, 1994, c.34 is the federal legislation authorizing land claim settlements. [Act in force 2/14/95, see SI/95-19, except for 20(1), (2) and (4)]. Here is a summary of the Act's provisions:

- The Act binds the federal government.
- The Act approves and declares valid these FAs:
 - the Champagne and Aishihik First Nation Final Agreement;
 - the First Nation of Nacho Nyak Dun Final Agreement;
 - the Teslin Tlingit Council Final Agreement; and
 - the Vuntut Gwitchin First Nation Final Agreement.
- The GIC can approve any transboundary agreement or FA entered into after the Act comes into force.
- The FA (or a transboundary agreement) is a land claims agreement under section 35 of the *Constitution Act* and binding on all persons and bodies not parties to it.
- The *Indian Act* ceases to apply to any reserve identified as settlement land when a FA takes effect.
- Federal and territorial laws apply to a First Nation, to persons enrolled in a First Nation, and to settlement land, subject to the following conflicts;
- If there is a conflict between the FA or a transboundary agreement and:

- federal or territorial law, the FA or transboundary agreement prevails;
 - the Umbrella Final Agreement, the Umbrella Final Agreement prevails;
 - the Inuvialuit Final Agreement, the Inuvialuit Final Agreement prevails.
- If there is a conflict between the Act and any other statute, the Act prevails.

1.1.1.3 AMENDMENTS

(*Umbrella Final Agreement: Chapter 2*)

Amendments to FAs must be approved by all parties to the Agreement. Amendments are approved by the GIC for Canada, and the Commissioner in Executive Council for the Yukon unless otherwise indicated in the FA. All finalized FAs have authorized:

- the Minister of Indian Affairs and Northern Development (for Canada), and
 - the Minister responsible for land claims (for the Yukon), to consent to amendments of certain provisions. These generally relate to land tenure, access to Crown lands, settlement land descriptions and trap lines. These officials may also receive power to amend other provisions in the future.
- Amendments to the Umbrella Final Agreement require agreement of:
- Canada, by the GIC;
 - Yukon, by the Commissioner in Executive Council; and
 - Yukon First Nations.

1.1.1.4 LANDS SET ASIDE

(*Umbrella Final Agreement: Chapter 4*)

Lands set aside are parcels of land in the Yukon, reserved or set aside for the use of the Indian and Inuit Program for Yukon Indian people. Where First Nations have previously indicated claims to land parcels in the Yukon, government has frequently set such areas aside for their use. Property records of the Northern Affairs Program in the Department of Indian Affairs and Northern Development have notations concerning these areas.

Under the UFA, First Nations must now register title to any lands that had been set aside for them. These may include lands with improvements.

If First Nations do not register title to lands that were previously set aside for them, those lands will lose their special status, and the notations in the department's records will be cancelled.

1.1.1.5 GENERAL PROVISIONS

(Umbrella Final Agreement: Chapter 2)

Settlement Agreements are land claim agreements under section 35 of the *Constitution Act*, 1982.

The FAs do not affect:

- Aboriginal claims of Yukon First Nations in British Columbia or the Northwest Territories;
- identity as Aboriginal people of Canada;
- rights as Canadian citizens;
- except for some specific provisions in the FAs, the rights to exercise and benefit from constitutional rights for Aboriginal people;
- the ability to participate and benefit from government programs for Aboriginal people (programs for lands set aside do not cease only because they become settlement land); and
- benefits under the *Indian Act* (except under two chapters of the UFA).

Yukon First Nations and Yukon Indian people who are part of the First Nation cede (on the effective date of a FA) all Aboriginal claims to:

- non-settlement land and all other land in Canada except Northwest Territories, British Columbia and settlement land;
- mines and minerals within all settlement land (with one minor qualification for site specific lands);
- Fee Simple Settlement Land;
- Category A and B Settlement Lands and the waters they contain, to the extent consistent with the FA; and
- Treaty 11 rights.

1.1.2 DEFINITIONS

(Umbrella Final Agreement: Chapter 1)

The Umbrella Final Agreement defines these words:

Category A Settlement Land:

This refers to land where the First Nation holds title to both the surface and sub-surface. For these lands, the First Nation acts, in general, as a private landowner. These are not federal lands, and the FAs spell out any federal jurisdiction remaining over them. Please see 1.2 and 1.3.1.3 of this document for a discussion of specific titles and jurisdiction.

Category A Settlement Land is identified in a map attached to the FA. The FA stipulates that Category A Settlement Land must be:

- so declared when settlement land is reacquired;
- so designated when replacing expropriated settlement land; and
- still owned by the First Nation.

Category B Settlement Land:

This refers to land where the First Nation holds title to the surface, but not to the sub-surface. The First Nation has rights to specified substances, such as sand and gravel. For these lands the First Nation acts like a private landholder. With Category B land, however, the federal government retains title to mines and minerals. Please see 1.2 and 1.3.1.3 of this document for a discussion of titles and jurisdiction.

Category B Settlement Land is identified in a map attached to the FA. The FA stipulates that Category B Settlement Land must be:

- so declared when settlement land is reacquired;
- so designated when replacing expropriated settlement land; and
- still owned by the First Nation.

Community boundary:

This refers to:

- for a municipality or hamlet under the Municipal Act (Yukon), the boundary under that Act;

- for any other community, the boundary as set out in the FA until the Municipal Act applies to the community.

Crown land:

Crown land includes both federal and Commissioner's lands, but not settlement land.

Developed settlement land:

This refers to specific parcels of settlement land, which the First Nation and government have agreed to call "developed." The specifics of what "development" means are not spelled out in the UFA. These parcels of settlement land will be officially designated as "developed" in one of the following:

- the FA;
- an agreement between government and a First Nation; or
- a replacement for expropriated settlement land.

Existing mineral right:

This means a mineral right (or an unrecorded right to explore for minerals other than petroleum) which existed at the date when the parcel of land became settlement land. It includes any renewal or replacement of such a right, or certain new rights. It does not include a right to locate a claim.

Fee Simple Settlement Land:

This is land which has been registered with the Land Titles Office, by a First Nation. It may include either Category A or Category B Settlement Land. The difference is this: Category A or B land is designated under a FA, but the First Nation must subsequently register its title with the Land Titles Office. Once this is complete, the land is Fee Simple Settlement Land. Please see 1.2 and 1.3.1.3 of this document for a discussion of specific titles and jurisdiction.

Fee Simple Settlement Land is identified in a map attached to the FA. The FA stipulates that Fee Simple Settlement Land must be:

- so declared when settlement land is reacquired;
- so designated when replacing expropriated settlement land; and
- still owned by the First Nation.

Government:

This refers to the Canadian Government or the Yukon Government or both.

Heritage site:

A heritage site is an area of land that contains moveable heritage resources, or is of value for aesthetic or cultural reasons.

Lands set aside:

These are parcels of land in the Yukon, set aside for the use of the Indian and Inuit Program for Yukon Indian people. Where First Nations have previously indicated claims to land parcels in the Yukon, government has frequently set such areas aside for their use. Property records of the Northern Affairs Program in the Department of Indian Affairs and Northern Development have notations concerning these areas.

Major highway:

This means a highway listed in the FA.

Mineral right:

A mineral right means any licence, permit or other right to:

- explore for,
- locate,
- develop,
- produce or
- transport

any minerals (other than specified substances), and to enter on land for those purposes.

New mineral right:

This means any mineral right other than an existing mineral right.

Non-settlement land:

Non-settlement land refers to all land and water in the Yukon other than settlement land. It includes mines and minerals in Category B and Fee Simple Settlement Land, other than specified substances.

Proposed Site Specific Settlement Land:

This refers to small parcels of land proposed by a First Nation as Site Specific Settlement Land, and identified as such on maps in the FAs. This is land which remains under negotiation. During the negotiation process, the land is not available for persons seeking licences, and so on. (See *Site Specific Settlement Land* below.)

Settlement Agreement:

A settlement agreement is a Final Agreement or a Transboundary Agreement.

Settlement land:

This means Category A, Category B, or Fee Simple Settlement Land.

Site Specific Settlement Land:

This refers to a small parcel of land which was originally “proposed site specific land,” and has now been surveyed and confirmed as settlement land under the FA.

Specified substances:

These are carving stone, sand, gravel, and so on.

Traditional territory:

This is an area within the Yukon Territory identified on a map under the FA as a First Nation’s traditional territory.

Transboundary Agreement:

This means a land claims agreement relating to:

- Aboriginal claims in a Yukon First Nation’s traditional territory by the:
 - Kaska Dena Council;
 - Tahltan Tribal Council;
 - Taku River Tlingits (British Columbia);
 - Dene/Métis of the Northwest Territories; and
- Aboriginal claims by Yukon Indian people in the Northwest Territories or British Columbia.

Undeveloped Settlement Land:

This refers to settlement land:

- not designated as developed; or
- designated as undeveloped under the FA.

Yukon Indian Person:

This means a person enrolled under one of the Yukon First Nation FAs.

1.1.3 ADMINISTRATIVE BODIES

1.1.3.1 GENERAL

Chapter 2 of the UFA lists various boards and general qualifications for memberships.

1.1.3.2 YUKON LAND USE PLANNING COUNCIL

(Umbrella Final Agreement: Chapter 11)

The Yukon Land Use Planning Council was to be established on February 14, 1995. The Council makes recommendations to government and Yukon First Nations on:

- land use planning (including policies, goals and priorities) in the Yukon;
- identification of planning regions and priorities (for preparing regional land use plans);
- general terms of reference and time frames for each Regional Land Use Planning Commission;
- boundaries of each planning region; and
- other matters as agreed by government and Yukon First Nations.

1.1.3.3 REGIONAL LAND USE PLANNING COMMISSIONS

(Umbrella Final Agreement: Chapter 11)

If a First Nation and government agree to set up a Regional Land Use Planning Commission, the Commission will make up a regional land use plan. This will include recommendations for using land, water, and other renewable and non-renewable resources in the region. The composition of the Commission is set out in the UFA.

1.1.3.4 SURFACE RIGHTS BOARD

(Umbrella Final Agreement: Chapter 8)

The UFA sets out the powers and responsibilities of the Surface Rights Board.

The Board has jurisdiction over:

- any matter referred to the Board by a FA;
- on non-settlement land, a dispute between:
 - persons, other than government, holding surface rights, and
 - persons, other than government, having access rights or holding a mineral right;
- any other matter set out in the Surface Rights Board legislation.

The Board's powers and responsibilities include:

- establishing terms and conditions on an access right;
- awarding compensation for:
 - exercise of access right;
 - exercise of right to use surface;
 - damage resulting from access or use of the surface;
 - damage from activities of persons holding mine and mineral rights;
- acting in expropriations of settlement land;
- determining whether an access right complies with certain terms set out in a FA; and
- designating access routes on settlement land in certain cases.

The *Yukon Surface Rights Board Act* came into force on February 14, 1995. It establishes a Board to:

- set (on request) terms and conditions (including an entry fee and compensation) for persons to exercise an access right on settlement land – where access requires consent of the relevant First Nation;
- impose (on request of the relevant First Nation) terms and conditions for persons who exercise an access right on settlement land – where access does *not* require consent of the First Nation – where the terms and conditions are in addition to those already set out in the relevant FA and the Act;
- resolve (on request) disputes over certain access rights on settlement land, including access over the waterfront right-of-way, where access does not require consent of the relevant First Nation;
- resolve (on request) certain conflicts between a First Nation having a specified substances rights and the holder of mineral rights in settlement land;

- resolve (on request) certain disputes between government and First Nations relating to government quarries on settlement land;
- fix (on request) compensation for certain expropriations of settlement land;
- fix (on request) compensation for the continuation of government-authorized use of certain settlement land;
- exercise any powers given to it by regulations under the Act relating to a specific parcel of settlement land; and
- interpret (on request) certain statutory access rights relating to the exercise of mineral rights where a dispute has arisen between the holder of surface rights and the holder of mineral rights in non-settlement land.

1.1.1.5 YUKON WATER BOARD

(Umbrella Final Agreement: Chapter 14)

The Yukon Territory Water Board (established under the Yukon Waters Act and the Yukon Waters Regulations) regulates the conservation, development and use of waters and the deposit of waste in the Yukon Territory. The Board's jurisdiction applies to settlement land and federal land.

Licences are required for certain activities. Persons may also need to apply to the Board for permission to conduct certain activities. The FAs identify these cases.

1.1.1.6 YUKON DEVELOPMENT ASSESSMENT BOARD

(Umbrella Final Agreement: Chapter 12)

Legislation establishing the Yukon Development Assessment Board has not yet been introduced into Parliament. This legislation will provide a process for assessing projects from an environmental and socio-economic perspective in the Yukon Territory. This includes both new projects and significant changes to existing projects. With government agreement, the Yukon Development Assessment Board may assess:

- plans;
- existing projects;
- shutdowns of existing projects; and

- proposed projects outside the Yukon (if they would cause significant adverse effects in the Territory).

In addition, the legislation will enable designated offices, such as government or Yukon First Nation offices, to conduct assessments. The legislation will set out criteria to determine whether the Board or a designated office is the entry point for each assessment process.

Since this development assessment process would not be operable under current legislation, the new legislation will include amendments (to such existing acts as the Territorial Lands Act, Yukon Waters Act, Yukon Placer Mining Act and Yukon Quartz Mining Act). This will ensure that those acts conform to the proposed development assessment process under the new statute.

1.1.5.7 YUKON HERITAGE RESOURCES BOARD

(Umbrella Final Agreement: Chapter 13)

The FAs call for the establishment of a Yukon Heritage Resources Board to make recommendations to government and Yukon First Nations on managing heritage sites. Site management plans (reviewed by the Board and approved by government or the First Nation) will determine what access is permitted to designated heritage sites.

If a proposed Special Management Area is:

- an historic territorial park,
- a national historic site administered by the Canadian Parks Service, or
- a Designated Historic Site,

the proposal for the Area (and its proposed management plan) may be referred to the Board. Alternatively, government may establish another management advisory body for a Special Management Area, which would have the same role as the Board.

1.1.5.8 FISH AND WILDLIFE MANAGEMENT BOARD (INCLUDING SALMON SUB-COMMITTEE)

(Umbrella Final Agreement: Chapter 16)

A Fish and Wildlife Board will be the primary instrument for managing fish and wildlife in the Yukon. The Board may make recommendations to government, First Nations and Renewable Resource Councils on all matters related to fish and wildlife management. These include such matters as legislation, research, policies and programs.

A Salmon Sub-committee of the Board will be the main instrument of salmon management in the Yukon. This Sub-committee may make recommendations to government and First Nations on all matters related to salmon, their habitats and management (including legislation, research, policies and programs).

The Sub-committee may also change “basic needs allocations” in certain circumstances. Such changes are final and binding and only subject to limited judicial review. (“Basic needs allocations” refers to a quota that individuals or communities are permitted to harvest for their basic personal needs.)

The FAs set out a process that government must follow when receiving decisions and recommendations from Renewable Resources Councils, the Fish and Wildlife Management Board, and its Sub-committees.

1.1.5.9 RENEWABLE RESOURCES COUNCILS

(Umbrella Final Agreement: Chapter 16)

The FAs establish a Renewable Resources Council for each First Nation’s traditional territory. This Council is to be a primary instrument for local renewable resources management in that traditional territory. In the Nacho Nyak Dun FA, the Council is called the Mayo District Renewable Resources Council.

Each FA sets out powers and responsibilities for the Renewable Resources Council. The Council may make recommendations to government, First Nations, the Fish and Wildlife Management Board and its Sub-committees on any matter related to fish and wildlife conservation. The Council may also make bylaws under the territorial Wildlife Act, for managing

furbearers. Such bylaws are final and binding and only subject to limited judicial review.

Unless otherwise provided in a FA, government will refer any proposed Special Management Area (and a proposed management plan for the Area) to a Renewable Resources Council for review and recommendations. For an area proposed as:

- an historic territorial park
- a national historic site administered by the Canadian Parks Service, or
- a Designated Historic Site,

the proposal (and its proposed management plan) may be referred instead to the Yukon Heritage Resources Board. Alternatively, government may establish another management advisory body for a Special Management Area, which would have the same role as the Council or Board.

The FAs set out a process that government must follow when receiving decisions and recommendations from Renewable Resources Councils.

Government will consult with Renewable Resources Councils prior to establishing new legislation or policies affecting forest resources. A Renewable Resources Council may make recommendations to government and First Nations on forest resources management on settlement and non-settlement land within First Nations' traditional territories.

1.1.1.10 DISPUTE RESOLUTION BOARD

(Umbrella Final Agreement: Chapter 26)

When disputes arise from the FAs or the settlement legislation, the FAs call for a Dispute Resolution Board to establish rules and procedures governing mediations and arbitrations.

Until the Dispute Resolution Board is established, the Yukon Arbitration Act will apply to any arbitration under the FAs.

1.1.3.11 YUKON GEOGRAPHICAL PLACE NAMES BOARD

(Umbrella Final Agreement: Chapter 13)

The FAs establish a Yukon Geographical Place Names Board to name or rename places or features in the Yukon. Consultations with First Nations are required in certain circumstances. When a Yukon First Nation names places or features on settlement land, these are deemed to have Board approval.

1.1.4 OTHER ABORIGINAL PEOPLES

1.1.4.1 YUKON FIRST NATION SETTLEMENT AGREEMENTS

The Umbrella Final Agreement and the FAs contain specific provisions relating to the negotiation of transboundary agreements. These are land claims agreements relating to:

- Aboriginal claims in a Yukon First Nation's traditional territory by the:
 - Kaska Dena Council;
 - Tahltan Tribal Council;
 - Taku River Tlingits (British Columbia);
 - the Dene/Métis of the Northwest Territories; and
- Aboriginal claims by Yukon Indian people in the Northwest Territories or British Columbia. (Chapter 25)

Note: A Yukon First Nation may manage, allocate and regulate the exercise of fish and wildlife harvesting rights within its traditional territory by members of a transboundary claimant group, where it is not inconsistent with government regulation of those rights. (Chapter 16)

1.1.4.2 YUKON TRANSBOUNDARY AGREEMENT

Umbrella Final Agreement: Chapter 12 of the Yukon Transboundary Agreement gives to the Tetlit Gwich'in (with consent of the Vuntut Gwitchin First Nation) rights to trap in any part of the Old Crow Group Trapping Area that is in the secondary use area under that Agreement, subject to any limitations applying to the Vuntut Gwitchin First Nation.

Also under that chapter, the Tetlit Gwich'in have the right to harvest for subsistence fish and wildlife in the secondary use area under the Transboundary Agreement. They have the same right in those areas of the Nacho Nyak Dun traditional territory not subject to overlap with the traditional territory of any other Yukon First Nation. The right to harvest in these areas is subject to regulation by a Yukon First Nation under its FA.

1.2 JURISDICTIONAL CATEGORIES

Three jurisdictional categories of land exist in the Yukon First Nation settlement areas in the Yukon Territory.

1. *Settlement Lands* under the Yukon First Nation Final Agreements (FAs). These lands are held by First Nations in the following three manners:
 - a. *Category A Settlement Lands*. Here the First Nation has a fee simple equivalent title in the lands and fee simple title to all mines and minerals. For these lands, the First Nation acts in general as a private landowner. The lands are not federal lands, and any federal jurisdiction over the lands derives from the FAs.
 - b. *Category B Settlement Lands*. Here the First Nation has a fee simple equivalent title in the lands, excluding mines and minerals. The First Nation also has the right to specified substances, including sand and gravel. These surface lands are not federal lands, and any federal jurisdiction over the surface lands or the specified substances derives from the FAs. The federal government has the fee simple equivalent title to mines and minerals other than specified substances, and retains jurisdiction over them subject to the FAs.
 - c. *Fee Simple Settlement Lands*. These are the same as Category B lands, except that the First Nation has a fee simple title rather than a fee simple equivalent title.
2. *Reserves under the Indian Act* as identified in the FAs. These are not settlement lands. Other lands are identified in some FAs that may be retained as reserves pending finalization of specific claims.
3. *Federal Lands*. The federal government has jurisdiction over them, subject to the FAs.

Note: We do not discuss Commissioner's lands in this publication.

1.3 SETTLEMENT LANDS

1.3.1 LAND OWNERSHIP

1.3.1.1 ADMINISTRATIVE BODIES

The Yukon Surface Rights Board has a role in determining compensation on expropriations of settlement land. Please see 1.1.3 for more information.

1.3.1.2 LAND QUANTUM

(Umbrella Final Agreement: Chapter 9)

Yukon First Nations received the following settlement lands under the finalized FAs.

Category A Settlement Land:

- The Champagne and Aishihik First Nations received title to approximately 475 square miles of land.
- The First Nation of Nacho Nyak Dun received title to approximately 930 square miles of land.
- The Teslin Tlingit Council received title to approximately 475 square miles of land.
- The Vuntut Gwitchin First Nation received title to approximately 2,990 square miles of land.

Category B and Fee Simple Settlement Lands:

- The Champagne and Aishihik First Nations received title to approximately 450 square miles of land.
- The First Nation of Nacho Nyak Dun received title to approximately 900 square miles of land.
- The Teslin Tlingit Council received title to approximately 450 square miles of land.
- The Vuntut Gwitchin First Nation did not receive title to any of these lands.

1.3.1.3 TITLE

(Umbrella Final Agreement: Chapter 5)

In Category A Settlement Land, the First Nation has the following title:

- fee simple equivalent title to the land (excepting the mines and minerals and the right to work the mines and minerals); and
- fee simple title to the mines and minerals, and the right to work the mines and minerals.

In Category B Settlement Land, the First Nation has the following title:

- fee simple equivalent title to the land (excluding the mines and minerals, and the right to work the mines and minerals); and
- the right to specified substances such as carving stone, sand and gravel.

In Fee Simple Settlement Land, the First Nation has the following title:

- fee simple title, excluding mines and minerals, and the right to work the mines and minerals; and
- the right to specified substances such as carving stone, sand and gravel.

The title to settlement lands is held under the collective ownership of each First Nation.

Settlement lands are not reserve lands.

Settlement lands can be expropriated by government under special rules set out in the FAs. (Umbrella Final Agreement: Chapter 7)

Exceptions to Title

FAs list certain exceptions to the First Nations' title for the land. These exceptions generally relate to rights existing when the land became settlement land. Exceptions also concern renewals of those rights, certain government rights and certain public access rights. Government will continue to administer these excepted rights in settlement land, as though it were Crown land. This includes granting renewals, replacements and certain new rights.

Changes to existing access rights (other than renewal or replacement) require First Nation consent, or failing that, a Surface Rights Board order. (Umbrella Final Agreement: Chapter 6)

Rents and Royalties

Rents and royalties on existing rights, leases or timber agreements are payable to First Nations by government after the land becomes settlement land. Government will consult with First Nations before renewing, replacing or issuing a new right, or setting a royalty, rent or fee. If legislation is amended to allow for an increased term for a right, government needs the consent of First Nations prior to increasing the term. The right holder and a First Nation can agree to replace the right with an interest from the First Nation. The Minister has to consent, but the FAs limit the circumstances under which this consent can be withheld.

Registering Title

A First Nation must register title as soon as practicable, to fee simple interest in mines and minerals in, and under, Category A Settlement Lands.

A First Nation may deregister settlement lands from the Land Titles Office under certain circumstances. Subject to certain rules, a First Nation may transfer the surface rights to another party, but may not transfer the subsurface rights. When a First Nation wants to divest itself of a partial or entire interest in Category A (not mines) or other settlement lands, special rules apply that may make the lands:

- lose their settlement land status; or
- make them subject to similar exceptions applied to sold Crown lands under the Territorial Lands Act.

Following land selection under the FAs, non-settlement lands may become settlement lands in two situations:

- the lands are compensation for expropriated settlement land (Umbrella Final Agreement: Chapter 7); or
- the lands are former settlement lands reacquired by the First Nation.

Water Body Beds

Portions of beds of water bodies *within settlement land boundaries* are settlement land. Beds of water bodies contiguous to settlement land are generally not settlement land. Any exceptions are set out in the land descriptions in the FAs.

The natural boundaries of settlement land along water are generally at ordinary high water mark. Any exceptions are set out in the land descriptions in the FAs. (Umbrella Final Agreement: Chapter 15)

Maps, Descriptions and Surveys

Maps and legal descriptions of settlement land, including land categories and exceptions to title, are annexed to the FAs. Plans of settlement lands shall be deposited in a Land Titles Office and, if established, the First Nation's land recording system.

Site specific settlement land only becomes settlement land after surveying of all the sites is completed. Withdrawal Orders under certain statutes, such as the *Territorial Lands Act*, continue in effect until the site specific lands become settlement lands.

A map of the First Nation's traditional territory is contained in its FA. Overlapping rights of other First Nations in the traditional territory are resolved in the FAs. (Umbrella Final Agreement: Chapter 2)

Settlement land where hydro-electric and water storage projects are proposed are noted in the descriptions of settlement land in the FAs, and caveats are placed on title registration.

One provision in the FAs discloses federal interests in land, where those interests are administered by federal entities other than the Department of Indian Affairs and Northern Development.

1.3.1 LAND USE

1.3.1.1 ADMINISTRATIVE BODIES

The Yukon Land Use Planning Council and any established Regional Land Use Planning Commissions have a role in land use planning in the Yukon. Please see 1.1.3 for further information.

The Yukon Surface Rights Board has a role in resolving certain disputes relating to land use. Please see 1.1.3 for more information.

The Yukon Heritage Resources Board has a role in the management of heritage sites in the Yukon. Please see 1.1.3 for more information.

Renewable Resources Councils and the Yukon Heritage Resources Board may have an advisory role in managing Special Management Areas, such as parks and wildlife areas. Please see 1.1.3 for more information.

1.1.1 GENERAL

(Umbrella Final Agreement: Chapter 5)

The First Nation may exercise the following management powers over settlement land. It may:

- enact bylaws for use and occupation of the land;
- develop and administer land management programs related to land;
- charge rent and other fees for the use and occupation of land; and
- establish a land interest recording system for the land.

The FAs denote any exceptions.

1.1.3 WATERFRONT RIGHT OF WAY

(Umbrella Final Agreement: Chapter 5)

Unless otherwise indicated in the FA, a thirty metre waterfront right of way is reserved from navigable waters abutting or within settlement land. Under certain conditions, this allows the public access for travel and non-commercial recreation, including camping and sport fishing. It also permits access for commercial recreation purposes, subject to First Nation consent, or failing that, a Surface Rights Board order. Appendix A of the FAs describes any exceptions.

1.1.4 SPECIAL MANAGEMENT AREAS

(Umbrella Final Agreement: Chapter 10)

The FAs discuss establishment and management of Special Management Areas within traditional territories of First Nations. “Special Management Area” means an area identified within a traditional territory and may include:

- national wildlife areas;
- national parks or national park reserves, territorial parks, and national historic sites;

- special wildlife or fish management areas;
- wildlife or migratory bird sanctuaries;
- designated heritage sites; and
- watershed protection areas.

A Special Management Area may not include settlement land without First Nation consent. Unless otherwise agreed, government shall be the management authority for Special Management Areas on non-settlement land.

Unless otherwise provided in a FA, government will refer any proposed Special Management Area (and a proposed management plan for the Area) to a Renewable Resources Council for review and recommendations. For an area proposed as:

- an historic territorial park
- a national historic site administered by the Canadian Parks Service, or
- a Designated Historic Site,

the proposal (and its proposed management plan) may be referred instead to the Yukon Heritage Resources Board. Government may establish another management advisory body for a Special Management Area, which would have the same role as the Council or Board.

Subject to specific provisions in FAs, government will plan, establish and manage

- national parks,
- national park reserves, and
- national historic parks and sites,

under standard parks legislation, policies and management plans.

Where a Special Management Area includes a national park or national park reserve, non-renewable resource exploration and development will not be permitted, except for sand, gravel and construction materials for construction purposes within the park or reserve.

Where a Special Management Area includes burial sites and places of religious and ceremonial significance to a Yukon First Nation, the management plan will be consistent with heritage provisions in the FA.

Special Management Areas established after the settlement legislation will be:

- consistent with approved land use plans; and
- subject to the development assessment process.

Fish and wildlife in Special Management Areas will be managed in accordance with the fish and wildlife provisions of FAs.

1.1.2-5 LAND USE PLANS

(Umbrella Final Agreement: Chapter 11)

Any regional land use planning process in the Yukon will (among other things):

- apply to settlement and non-settlement land; and
- apply to establishing or extending national parks, and national historic parks, or to commemorating new national historic sites.

Land use planning provisions of the FAs do not apply to:

- existing or established national parks, national park reserves, national historic parks and national historic sites;
- subdivision or local area planning outside of a community boundary; and
- lands within a community boundary, except where the boundary has been altered. In this case, lands remain subject to a regional land use plan until a community plan is approved for the lands.

In granting interests in or authorizing use of land, water and other resources, government or a First Nation will exercise its discretion (subject to the development assessment process). Such interests will conform to the regional land use plan approved by government. Government can establish a sub-regional or district land use plan for *non-settlement* land, while a First Nation can do the same for *settlement* land. If sub-regional or district plans conflict with regional plans, the regional plan overrides.

1.1.2-6 HERITAGE SITES AND RESOURCES

(Umbrella Final Agreement: Chapter 13)

Each Yukon First Nation will own and manage non-moveable heritage resources found on its settlement land and on the beds of water bodies owned by it. Although the public, third parties, or government may be granted access to settlement land, this does not take away the First Nation's ownership and management right.

Government and Yukon First Nations may enter into agreements relating to the ownership, custody or management of heritage resources.

A Yukon First Nation or a Yukon Indian person owning a heritage resource may transfer its ownership or custody to another Yukon First Nation or to another Aboriginal person.

Government will consult with Yukon First Nations when formulating legislation and policies on heritage resources in the Yukon.

Government and Yukon First Nations will each establish procedures to manage and protect Yukon First Nation burial sites.

Ownership and management of heritage sites in a traditional territory are addressed in the FAs. Access to designated heritage sites shall be controlled in accordance with site management plans reviewed by the Yukon Heritage Resources Board and approved by government or the First Nation.

Someone may accidentally discover heritage resources on settlement land. FAs set out procedures for such cases. If a person is exercising a right of access or right to use settlement land under a FA, that person may only continue to disturb a heritage site with the consent of the First Nation or failing that, an order of the Surface Rights Board.

While carrying out an activity authorized by government or a First Nation, someone may discover a First Nation burial site. The person may continue to carry out the activity with consent of the First Nation in whose traditional territory the site is located. In absence of agreement, arbitration will determine the terms and conditions of disturbance.

1.3.1 GENERAL ACCESS RIGHTS

1.3.1.1 ADMINISTRATIVE BODIES

The Yukon Surface Rights Board has powers to regulate access and surface rights over settlement land. Please see 1.1.3 for more information.

1.3.1.2 GENERAL

(Umbrella Final Agreement: Chapter 6)

Laws of general application for access apply to settlement lands just as to private lands, subject to specific exceptions in the FAs. A First Nation has the same duty to care for persons using an access right for settlement land, as government does for those using access rights for unoccupied Crown land.

FAs contain the following general access rights over settlement land:

- for commercial or non-commercial purposes (if the access is casual or over a previous route), persons have a general right of access over undeveloped settlement land to reach adjacent non-settlement land. This does not require consent of the First Nation. The FAs can limit previous routes.
- for non-commercial recreational purposes, persons have a general right of access over undeveloped settlement land. This does not require consent of the First Nation.

Note: A First Nation or any person may refer disputes over the above two access rights to the Surface Rights Board.

- where the FA contains no access right, a person (*with the consent of the First Nation, or failing that, a Surface Rights Board order*) has a right of access over undeveloped settlement land to reach adjacent non-settlement land for commercial or non-commercial purposes.
- holders of existing access rights across settlement land for commercial or non-commercial purposes retain these rights as if the land were not settlement land, including renewals or replacements of the rights. Any changes in terms other than renewal or replacement require First Nation approval, or failing that, a Surface Rights Board order. In certain circumstances, government must consult with First Nations before renewing or replacing access rights.

- access over undeveloped settlement land is given (under certain conditions) to government employees, public utility employees and military personnel.

Emergency entry on settlement land is allowed. The First Nation must be notified as soon as possible, and there is a potential liability for damage caused in the entry.

Government and First Nations can (in the FAs or otherwise) amend, revoke, or reinstate rights of access to address special circumstances on specific parcels of settlement land.

In general, the rights of access are subject to these conditions:

- no significant damage to settlement land or improvements on it;
- no mischief on settlement land;
- no significant interference with First Nation enjoyment of settlement land;
- no fee or charge payable to the First Nation;
- no compensation for non-significant damage.

Failure to comply with any of the first three conditions can make the person a trespasser.

Access rights do not necessarily provide a right to harvest fish or wildlife. First Nations may generally charge fees for granting access to Category A Settlement Land to Yukon residents in connection with harvesting fish and wildlife. Any exceptions are set out in the FAs.

New access routes on settlement land cannot become “public roads” unless expropriated.

A First Nation and government, or the Surface Rights Board, can establish conditions on access.

1.3.4 NON-RENEWABLE RESOURCES

1.3.4.1 ADMINISTRATIVE BODIES

The Yukon Surface Rights Board has a role in resolving disputes involving sub-surface rights holders in settlement land, and in regulating access to settlement land. Please see 1.1.3 for more information.

13.4.2 GENERAL

(Umbrella Final Agreement: Chapter 18)

A First Nation having a specified substances right and a person having mineral rights shall exercise those rights as far as practicable without interfering with the other. If conflict arises, either may apply to the Surface Rights Board for an order. Priority goes to the mineral rights holder. Compensation may be payable, but not by a holder of existing mineral rights.

Subject to a Surface Rights Board order, a mineral rights holder may take, use or destroy any specified substance incidental to his or her exercise of those mineral rights, without compensating the First Nation. Until the mineral rights expire, any specified substance so found becomes the property of the mineral rights holder.

FAs discuss government quarries for public purposes on settlement land.

FAs grant certain rights of access over settlement land to holders of mineral rights on settlement or non-settlement lands. This access requires First Nation consent, or failing that, a Surface Rights Board order.

These are the rights of access for holders of existing mineral rights:

- a person with existing mineral rights on settlement land or non-settlement land has a right of access over settlement land (for the purpose of exercising those mineral rights) without obtaining First Nation consent, if the access is casual or over a recognized and existing route, and no permanent structure is erected on settlement land;
- a person having existing mineral rights on settlement land has a right of access to use that settlement land (for the purpose of exercising those mineral rights) without obtaining First Nation consent, where provided by laws of general application;
- a person having existing mineral rights on settlement land or non-settlement land who does not have a particular right of access under a FA has a right of access over settlement land (for the purpose of exercising those mineral rights) *with* First Nation consent or failing that, a Surface Rights Board order.

These are the rights of access for new mineral right holders:

- a person having new mineral rights on Category B or Fee Simple Settlement Land, or non-settlement land, has a right of access over settlement land (for the purpose of exercising those mineral rights) without obtaining First Nation consent, if the access is casual or over a recognized and existing route, and no permanent structure is erected on the settlement land;
- a person having new mineral rights on Category B or Fee Simple Settlement Land has a right of access to use that settlement land (for the purpose of exercising those mineral rights) without obtaining First Nation consent, where no heavy equipment or non-hand labour is required. An agreement between a First Nation and government or a Surface Rights Board order may amend or revoke this right;
- a person having new mineral rights on Category B or Fee Simple Settlement Land, or non-settlement land, who does not have a particular right of access under a FA, has a right of access over settlement land (for the purpose of exercising those mineral rights) with First Nation consent, or failing that, a Surface Rights Board order.

These access rights only apply to *developed* settlement land to the extent the mineral rights are on developed settlement land.

The FAs set conditions for access. Access rights are subject to conditions that there be:

- no significant damage to settlement land or improvements thereon for certain access rights;
- no unnecessary damage to settlement land or significant damage to improvements thereon for certain other access rights;
- no mischief committed on settlement land;
- no significant interference with First Nation enjoyment of settlement land;
- no fees payable to the First Nation; and
- no compensation payable for non-significant damage.

Failure to comply with any of the first four conditions can make the person a trespasser.

Mineral rights holders may have additional rights of access under the FAs.

1.3.5 FORESTRY AND PLANTS

1.3.5.1 ADMINISTRATIVE BODIES

The Yukon Surface Rights Board has a role in resolving disputes between surface and sub-surface rights holders in settlement land and in regulating access to settlement land. Please see 1.1.3 for more information.

Renewable Resources Councils have an advisory role in forest management on settlement land. Please see 1.1.3 for more information.

1.3.5.2 GENERAL

(Umbrella Final Agreement: Chapter 17)

General forestry provisions in the FAs do not apply to national parks, national park reserves or national historic sites administered by the Canadian Parks Service.

A First Nation owns, manages and allocates the forest resources on its settlement land, subject to its FA.

Those holding *existing timber harvesting agreements* on settlement land can exercise all rights under these agreements as if the land were not settlement land, subject to the FA. They have a right of access, (including rights to construct a new access and to use settlement land for purposes related to the agreement) without First Nation consent.

Other holders of timber harvesting agreements have a right of access to settlement land (to reach adjacent land or to reach settlement land) with the consent of the First Nation, or failing that, a Surface Rights Board order.

A holder of an *existing commercial timber permit* on settlement land has a right of access to use settlement land (for purposes related to the permit) without First Nation consent.

Other holders of commercial timber permits have a right of access to settlement land (to reach adjacent land or to reach settlement land) with the consent of the First Nation, or failing that, a Surface Rights Board order.

These access rights only apply to *developed* settlement land to the extent the timber rights are on developed settlement land.

The access rights are subject to conditions that there be:

- no significant damage to settlement land or improvements thereon;
- no mischief committed on settlement land;
- no significant interference with First Nation enjoyment of settlement land;
- no fees payable to the First Nation; or
- no compensation payable for non-significant damage.

Failure to comply with any of the first three conditions may make the person a trespasser.

Government will consult with Renewable Resources Councils prior to establishing new legislation or policies affecting forest resources. A Renewable Resources Council may make recommendations to government and a First Nation on forest resources management on settlement and non-settlement land within the First Nation's traditional territory.

The FAs discuss "forest resource management plans" made by First Nations for settlement land.

1.3.6 WATER USE AND WASTE DEPOSIT

1.3.6.1 ADMINISTRATIVE BODIES

The Yukon Territory Water Board (established under the *Yukon Waters Act* and the Yukon Waters Regulations) regulates the conservation, development and use of waters and the deposit of waste in the Yukon Territory. The Board's jurisdiction applies to settlement land and Crown land. Please see 1.1.3 for further information.

The Surface Rights Board has a role in resolving disputes between surface and sub-surface rights holders in settlement land, and in regulating access to settlement land. Please see 1.1.3 for more information.

1.3.6.2 GENERAL

(Umbrella Final Agreement: Chapter 14)

A First Nation generally has exclusive rights to use water on, or flowing through, its settlement land. Any exceptions are set out in the FAs and in laws of general application. In the Nacho

Nyak Dun FA, this right is subject to the Yukon Trans-boundary Agreement.

Only in limited circumstances can the Yukon Water Board refuse a licence for use of water by a First Nation (or impose licence terms inconsistent with the terms of an assignment of water rights by a First Nation).

Ownership of water in the Yukon is determined by laws of general application. Generally, the Crown retains ownership of the water, even when others hold title to shoreline and lake or river beds. FAs do not affect the ability of any person to use water domestically in accordance with laws of general application.

A Yukon Indian person has the right to use water for traditional uses in the Yukon, subject to the laws of general application. No licence, fee or charge is required for this use, regardless of laws of general application. This does not grant a priority of use or a right to compensation.

Unless otherwise stated in law, First Nation rights to traditional use and to settlement land water use are subject to:

- public navigation and passage on water;
- use of water for emergency purposes;
- hunting, trapping or fishing by public; and
- any right of access set out in the FAs.

A First Nation can assign rights to settlement land water use. The assignee is subject to the same limitations as the First Nation.

Notwithstanding First Nation ownership of certain beds of water bodies, government has the right to protect and manage water and beds of water bodies. Government may also use water incidental to that right, throughout the Yukon, for certain purposes. These include protecting and managing fish, wildlife, and navigation, as well as other government public purposes.

Any person having a right or interest in settlement land (except an interest granted by the First Nation) may use water incidental to the exercise of that right in settlement land, if permitted under laws of general application. The person may have to pay compensation. Where the Water Board licences a water use to such a person, the term of the licence shall not exceed the term of the person's right in settlement land.

Interests granted by the First Nation generally do *not* include rights to use water.

At the time FAs took effect, certain persons held licenses (under the *Northern Inland Waters Act* or the *Dominion Water Power Act*) for water on or flowing through settlement land. Those license holders retain the rights as if the land were not settlement land. If the licence has a greater than five year term, the licensee has the right to apply to the Water Board for renewal or replacement, provided the First Nation receives notice and has an opportunity to be heard. Three years after the settlement date, the licence holder is generally liable to pay compensation to the First Nation.

A person may need to use settlement land in order to exercise his or her right to use water. The person's water right may allow him to use this land *without* First Nation consent. If the water right does *not* waive that consent, the person will need to obtain First Nation consent, or failing that, a Surface Rights Board order.

The following First Nation rights are subject to the rights of water users authorized in the FAs, and in laws of general application:

- a First Nation has the right to have waters on or flowing through or adjacent to settlement land remain substantially unaltered as to quality, quantity and flow rate;
- a First Nation shall not use such waters so as to substantially alter quality, quantity and flow rate, except to the extent authorized under the FA and in conformity with any water licence granted to the First Nation; and
- the Yukon Water Board can only grant a licence or permit interfering with this right if no reasonable alternative exists, notice is given, and compensation is payable.

A First Nation may apply to the Yukon Water Board for compensation from a person not licensed by the Board and using waters under laws of general application. The Board may order compensation where the use substantially alters water quality, quantity or flow rate.

A Yukon First Nation may bring certain water use disputes to the Board under the FA.

If the Yukon Water Board wishes to grant a licence (in any drainage basin in the Yukon Territory) that would substantially alter the water's quality, quantity or flow rate, and adversely

affect traditional use by a Yukon Indian Person in that person's traditional territory, the Board must give the First Nation notice, and consider alternatives.

A licensee who substantially alters the quality, quantity or flow rate of water contrary to law – and causes loss or damage arising from interference with a traditional water use by a Yukon Indian person in that person's traditional territory – will be liable to pay compensation under the FA.

The FA sets out rules on compensation for water use.

FISH AND WILDLIFE

ADMINISTRATIVE BODIES

The Renewable Resources Councils are a primary instrument for local renewable resources management in each First Nation's traditional territory. Their powers relate generally to forestry and fish and wildlife management. Please refer to 1.1.3 for further information.

The Fish and Wildlife Management Board (established under the Umbrella Final Agreement) will be the primary instrument for managing fish and wildlife in the Yukon. The Board may make recommendations to government, First Nations and Renewable Resource Councils on all matters related to fish and wildlife management. This includes such matters as legislation, research, policies and programs.

The FAs also call for a Salmon Sub-committee of the Board to be the main instrument of salmon management in the Yukon. Please see 1.1.3 for further information.

GENERAL

(Umbrella Final Agreement: Chapter 16)

The FAs place specific limitations on those exercising fish and wildlife rights under the FAs. Conservation, health and safety legislation also limit the scope of these rights. Nothing in the FAs:

- confers ownership rights in fish or wildlife;
- grants Yukon Indian people any commercial rights over migratory game birds not authorized by legislation; and

- prevents any person from killing fish and wildlife in an emergency. Any such kill must be reported as required by the Fish and Wildlife Management Board.

Yukon residents and others may harvest fish and wildlife (in accordance with legislation) unless the FA specifically states otherwise.

In cases of conflicts between fish and wildlife provisions in a FA and certain international agreements, the international agreements prevail.

Harvesting and management of fish and wildlife within national parks must be done in accordance with the *National Parks Act*. These issues are also subject to the Special Management Area rules, the Inuvialuit Final Agreement and to specific provisions in the FAs.

Subject to other provisions of the FAs, each First Nation may:

- manage, allocate and regulate the exercise of fish and wildlife harvesting rights (within traditional territory) by Yukon Indian people and members of a transboundary claimant group – where consistent with government regulation of those rights;
- manage local fish and wildlife populations within settlement land, to the extent that coordination with other management programs is not considered necessary by the Fish and Wildlife Management Board;
- charge fees for access (in connection with harvesting fish and wildlife) to:
 - Category A lands by a Yukon resident; and
 - settlement land by a Yukon big game outfitter.

Yukon Indian people generally have the right to harvest for subsistence within a First Nation's traditional territory on settlement land. The FAs describe any exceptions. The FAs also set out the rights of Yukon Indian people to trade and sell fish and wildlife products harvested under this right.

(Note: In the Nacho Nyak Dun FA, there is an exceptional boundary which affects their right to harvest in particular areas. Their traditional territory does not include the Primary Use Area necessary to give effect to certain provisions of the Gwich'in Transboundary Agreement.)

Government will not impose fees or taxes on Yukon Indian people relating to permits or licences to harvest under:

- subsistence harvest;
- total allowable harvest; or
- total allowable catch provisions of the FAs.

Subject to the FAs, Yukon Indian people will comply with laws of general application when participating in resident or commercial harvesting. However, Yukon Indian people have the right to use leg-hold drowning sets for furbearer harvesting unless government determines that such sets are inhumane.

Each FA sets out the manner in which Yukon Indian people and other harvesters will share the total allowable harvest. The Fish and Wildlife Management Board and the Renewable Resources Councils may establish and modify total allowable harvests for freshwater fish or wildlife populations in the Yukon.

Rights of access for wildlife harvesting on settlement land are set out in the FAs. They include the following:

- any trapper, with trap lines wholly or partially on settlement land, may continue to exercise all rights to the existing trap line without fee (in accordance with the FAs, laws of general application, and bylaws established by Renewable Resources Councils). There are special rules for Category 2 trap lines.
- any person has a right of access to enter, and stay on, undeveloped Category B Settlement Land – without consent of the First Nation – for the purpose of non-commercial fish and wildlife harvesting (if permitted under laws applying to Commissioner's lands). However, the Yukon Fish and Wildlife Minister may remove the public access right for any particular parcel of Category B Settlement Land.
- an outfitting concession holder has a right of access, to cross and make necessary stops on settlement land, to reach the outfitting area – without consent of the First Nation. This includes a right to erect temporary camps, but does not include a right to hunt or erect permanent camps. There are special rules about consultations with, and compensation to, outfitting concession holders.
- These last two access rights are subject to conditions that there be:
 - no significant damage to settlement land or improvements thereon;

- no mischief committed on settlement land;
- no significant interference with First Nation enjoyment of settlement land;
- no fees payable to the First Nation other than as specified in the FAs; or
- no compensation payable for non-significant damage.

Failure to comply with any of the first three conditions can make the person a trespasser.

No person shall waste edible fish or wildlife products, except as authorized under laws of general application.

FISHERY

(Umbrella Final Agreement: Chapter 16)

Government reserves the right to manage the fishery and determine who may fish in water bodies adjacent to the waterfront right-of-way. This right is subject to the FAs and notwithstanding First Nation ownership of beds of water bodies.

A First Nation owning the bed of a water body has the exclusive right to fish in that bed where there is no adjacent waterfront right-of-way, unless otherwise indicated in the FA.

The FAs may set out special freshwater fish harvesting rights for Yukon Indian people. The Teslin Tlingit, Champagne and Aishihik and Vuntut Gwitchin FAs contain special rights.

FURBEARERS

(Umbrella Final Agreement: Chapter 16)

The FAs describe the manner in which government, Renewable Resource Councils, the Fish and Wildlife Management Board and First Nations participate in the regulation, management and use of furbearers. FAs set trap line allocations for the First Nations.

Holders of traplines (other than Yukon Indian people) may construct and occupy on settlement land, cabins reasonably necessary for the use of traplines. They may also cut necessary trails on their traplines. This right is subject to access conditions set by a First Nation and government or the Surface Rights Board, and to laws of general application.

1.3.8 ENVIRONMENTAL ASSESSMENT

The Yukon Development Assessment Board will assess projects in the Yukon Territory from an environmental and socio-economic perspective. Please see 1.1.3 for further information.

FAs contain no specific provisions relating to environmental assessment.

1.3.9 ECONOMIC DEVELOPMENT

(Umbrella Final Agreement: Chapter 22)

Parties to each FA will develop a plan for Yukon Indian people to take advantage of economic development opportunities. This will take place after an implementation plan for the FA is completed.

FAs consider economic opportunities for Yukon Indian people at facilities related to heritage resources. (Umbrella Final Agreement: Chapter 13)

The FAs address economic opportunities for First Nations in forest resources. Under finalized FAs, First Nations have first rights of refusal on fixed term contracts for silviculture (forest care and development) within their traditional territories. (Umbrella Final Agreement: Chapter 17)

The FAs provide for specific economic measures addressing, among other things, participation by Yukon Indian people in harvesting activities.

The FAs set up a process for allocation to First Nations of licences and other authorizations for outfitting, commercial fishing other than salmon, or other uses of natural resources.

Certain areas (such as national parks) may be excluded from some of the economic development measures under the FAs.

1.4 RESERVES UNDER THE INDIAN ACT

(Umbrella Final Agreement: Chapter 4)

Under the FAs, Yukon First Nations determined whether reserves (for the purposes of the *Indian Act*) were to be retained as reserves, or selected as settlement land. Settlement lands lose any of their reserve status. Here are the results of the decisions so far:

- Nacho Nyak Dun: McQuesten Reserve #3 retained as reserve;
- Teslin Tlingit: Teslin Post Indian Reserve #13, Nisutlin Indian Reserve #14 and Nisutlin Bay Indian Reserve #15 retained as reserves, land at Teslin under specific claim may be designated as reserve;
- Champagne: Lands at Klukshu, Champagne #12, Champagne, Kloo Lake, Haines Junction, Aishihik, and Canyon under specific claims may be designated as reserves

The *Indian Act* governs the management of these reserves. Refer to that Act and its Regulations for further information on the jurisdictional regime for these lands.

1.5 FEDERAL LANDS

The jurisdictional regime is the same as under Chapter 4 of this document, “Other Yukon Territory Federal Lands,” except as follows.

1.5.1 LAND OWNERSHIP

1.5.1.1 GENERAL

(Umbrella Final Agreement: Chapter 5)

Nothing in the FAs precludes a Yukon First Nation or Yukon Indian people from acquiring or holding interests in non-settlement land.

Under the FAs, a Yukon First Nation and government may agree to exchange Crown land for settlement land, and may agree that the Crown land exchanged becomes settlement land. Some Aboriginal claims may remain in effect on the Crown land. (Umbrella Final Agreement: Chapter 9)

1.5.2 LAND USE

1.5.2.1 ADMINISTRATIVE BODIES

The Yukon Land Use Planning Council and any established Regional Land Use Planning Commissions have roles in land use planning in the Yukon. Please see 1.1.3 for further information.

The Yukon Surface Rights Board has a role in resolving certain disputes relating to land use. Please see 1.1.3 for more information.

The Yukon Heritage Resources Board has a role in the management of heritage sites in the Yukon. Please see 1.1.3 for more information.

Renewable Resources Councils and the Yukon Heritage Resources Board may have an advisory role managing Special Management Areas, such as parks and wildlife areas. Please refer to section 1.1.3 for more information.

1.5.3 OVERLAPPING RIGHTS

(Umbrella Final Agreement: Chapter 2)

The FAs resolve overlapping rights of First Nations in traditional territories.

1.5.4 HYDRO PROJECTS

(Umbrella Final Agreement: Chapter 7)

Government can identify up to 10 sites for hydro-electric or water storage projects in the Yukon Territory. FAs identify the following sites:

- Nacho Nyak Dun: Hess River Hydro-electric Project in traditional territory.
- Teslin Tlingit: Morley River Hydro Project in traditional territory.
- Champagne: Aishihik Hydro-Electric Project in traditional territory.

1.5.5 SPECIAL MANAGEMENT AREAS

(Umbrella Final Agreement: Chapter 10)

The FAs discuss establishment and management of Special Management Areas within traditional territories of First Nations. “*Special Management Area*” means an area identified within a traditional territory and may include:

- national wildlife areas;
- national parks or national park reserves, territorial parks, and national historic sites;
- special wildlife or fish management areas;
- wildlife or migratory bird sanctuaries;
- designated heritage sites; and
- watershed protection areas.

Unless otherwise agreed, government shall be the management authority for Special Management Areas on non-settlement land. A Special Management Area may not include settlement land without First Nation consent.

Unless otherwise specified in a FA, government shall refer any proposed Special Management Area (and its proposed management plan) to a Renewable Resources Council for review and recommendations.

For an area proposed as:

- an historic territorial park,
- a national historic site administered by the Canadian Parks Service, or
- a Designated Historic Site,

the proposal (and its proposed management plan) may be referred instead to the Yukon Heritage Resources Board. Government may establish another management advisory body for a Special Management Area, which would have the same role as the Council or Board.

Subject to specific provisions in FAs, government will plan, establish and manage

- national parks,
- national parks reserves, and
- national historic parks and sites,

under standard parks legislation, policies and management plans.

Where a Special Management Area includes a national park or national park reserve, non-renewable resource exploration and development will not be permitted, except for sand, gravel and construction materials for construction purposes within the park or reserve.

Where a Special Management Area includes burial sites and places of religious and ceremonial significance to a Yukon First Nation, the management plan will be consistent with heritage provisions in the FA.

Special Management Areas established after the settlement legislation will be:

- consistent with approved land use plans; and
- subject to the development assessment process.

Fish and wildlife in Special Management Areas will be managed in accordance with the fish and wildlife provisions of FAs.

15.15 LAND USE PLANS

(Umbrella Final Agreement: Chapter 11)

Any regional land use planning process in the Yukon will, among other things,:

- apply to settlement and non-settlement land; and
- apply to the process of establishing or extending national parks, national historic parks or commemorating new national historic sites.

The land use planning chapter of the FAs does not apply to:

- existing or established national parks, national park reserves, national historic parks and national historic sites;
- subdivision or local area planning outside of a community boundary; or
- lands within a community boundary, except where the boundary has been altered. In this case, lands remain subject to a regional land use plan until a community plan is approved for the lands.

In granting interests in or authorizing use of land, water and other resources, government will exercise its discretion (subject to the development assessment process). Such interests will conform to the regional land use plan approved by government. Government can establish a sub-regional or district land use plan for *non-settlement* land. If sub-regional or district plans conflict with regional plans, the regional plan overrides.

15.26 HERITAGE SITES AND RESOURCES

(Umbrella Final Agreement: Chapter 13)

The FAs set out heritage sites. They also address ownership and management of heritage sites in a traditional territory. In general, designation as a heritage site does not affect ownership. Special rules apply where there is a possible heritage site. In managing activities at heritage sites, government and First Nations will consider the land use activities of other resource users.

Government and a First Nation will institute a permit system for research at any site that may contain moveable heritage resources. Government will consult with the Vuntut Gwitchin First Nation before issuing a permit relating to Vuntut Gwitchin heritage resources.

Management plans (reviewed by the Yukon Heritage Resources Board and approved by government or the First Nation) control access to designated heritage sites.

Heritage resources in, or discovered on, non-settlement land during construction or excavation are governed by laws of general application, unless a FA indicates otherwise.

Where a person discovers a First Nation burial site (in the course of carrying out an activity authorized by government or a First Nation) the person may carry out the activity with consent of First Nation in whose traditional territory the site is located. In the absence of agreement, arbitration under the Dispute Resolution Board process will determine the terms and conditions of disturbance.

Government and Yukon First Nations may enter into agreements relating to ownership, custody or management of heritage resources.

A Yukon First Nation or a Yukon Indian person owning a heritage resource may transfer its ownership or custody to another Yukon First nation or to another Aboriginal person.

Government will consult with Yukon First Nations when formulating legislation and policies on heritage resources in the Yukon.

The relevant FAs will set out the management of heritage resources in national parks, Kluane National Park Reserve, and in national historic sites administered by the Canadian Parks Service.

Government and Yukon First Nations will each establish procedures to manage and protect Yukon First Nation burial sites.

- for a reasonable period of time for all non-commercial purposes if the access is:
 - casual or insignificant; or
 - for the purpose of harvesting fish and wildlife in accordance with the FA.
- to reach adjacent settlement land for commercial purposes if the access is:
 - casual or insignificant; or
 - over an existing traditionally used route.

These access rights don't apply to lands where the surface is leased or licensed, except to the extent the lease or licence permits public access, or the holder allows access. These access rights don't apply to lands where public access is limited or prohibited.

These rights of access are subject to the following conditions:

- no significant damage to the land or improvements on it;
- no mischief on the land;
- no significant interference with other persons' enjoyment of the land;
- no fee or charge payable to government; and
- no compensation for non-significant damage.

Contravention of any of the first three conditions means the Yukon Indian person or First Nation forfeits that right of access.

Nothing in the FAs deprives a First Nation or Yukon Indian person of any access rights to Crown land available to the public.

Any person granted rights by First Nation to explore or develop mines and minerals on Category A Settlement Lands will have the same rights of access to non-settlement lands as any other person.

Government must manage Crown land surrounding a block of settlement land, in a way that permits access to that settlement land via Crown land or a public road.

GENERAL ACCESS RIGHTS

(Umbrella Final Agreement: Chapter 6)

A Yukon Indian person or First Nation has a right of access without consent on Crown land:

11.1.4 NON-RENEWABLE RESOURCES

The Yukon Surface Rights Board has a role in resolving disputes between surface and sub-surface rights holders in non-settlement land. Please see 1.1.3 for more information.

There are no special provisions in the FAs relating to non-renewable resources on federal lands in the Yukon.

11.1.5 FORESTRY AND PLANTS

(Umbrella Final Agreement: Chapter 17)

Forestry provisions in the FAs do not generally apply to national parks, national park reserves or national historic sites administered by Canadian Parks Service.

Subject to forestry provisions in the FAs, Yukon Indian people have a right, during all seasons, to harvest on Crown land:

- forest resources for traditional purposes of hunting, fishing, trapping and gathering;
- up to 500 cubic metres of trees annually for each First Nation for non-commercial community purposes; and
- forest resources for purposes incidental to the practice of traditional customs, culture and religion.

No fees are payable for any permit or licence required under legislation for these activities.

These rights of Yukon Indian people and First Nations to harvest forest resources on Crown land:

- are subject to forestry, land, and environmental legislation;
- do not apply where:
 - the exercise of the right conflicts with a government-authorized activity;
 - the land is subject to surface lease or agreement for sale, unless the interest holder consents; and
 - public access is limited or prohibited on the land.

The FAs do not preclude any person from harvesting forest resources on Crown land in accordance with laws of general application. No harvesting priority is given to First Nations or Yukon Indian people.

A Renewable Resources Council may make recommendations to government and First Nations on forest resources management

on settlement and non-settlement land within First Nations' traditional territories. Government will consult with Renewable Resource Councils prior to establishing new legislation or policies affecting forest resources.

The FAs discuss forest resource management plans made by government for non-settlement land.

11.1.6 WATER USE AND WASTE DEPOSIT

11.1.6.1 ADMINISTRATIVE BODIES

The Yukon Territory Water Board (established under the *Yukon Waters Act* and the Yukon Waters Regulations) regulates the conservation, development and use of waters and the deposit of waste in the Yukon Territory. The Board's jurisdiction applies to settlement land and Crown land. Please see 1.1.3 for further information.

The Surface Rights Board has a role in resolving disputes between surface and sub-surface rights holders in settlement land, and in regulating access to settlement land. Please see 1.1.3 for more information.

11.1.6.2 GENERAL

(Umbrella Final Agreement: Chapter 14)

Ownership of water in the Yukon is determined by laws of general application. Generally, the Crown retains ownership of the water, even when others hold title to shoreline and lake or river beds. Nothing in the FAs:

- affects the ability of any person to use water domestically in accordance with laws of general application; or
- takes away the right of a First Nation or a Yukon Indian person to use of water on non-settlement land in accordance with law.

A Yukon Indian person has the right to use water for traditional uses in the Yukon, subject to the laws of general application. No licence, fee or charge is required for this use, regardless of laws of general application. This does not grant a priority of use or a right to compensation.

Unless otherwise authorized by law, First Nation rights to traditional water use are subject to:

- public navigation and passage on water;
- use of water for emergency purposes;
- hunting, trapping or fishing by the public; and
- any right of access set out in the FAs.

Notwithstanding First Nation ownership of certain beds of water bodies, government has the right to protect and manage water and beds of water bodies. Government can also use water incidental to that right – throughout the Yukon – for certain purposes. These include protecting and managing fish, wildlife, navigation, and other government public purposes.

The following First Nation rights are subject to the rights of water users authorized in the FAs and laws of general application:

- a First Nation has the right to have waters:
 - on,
 - flowing through, or
 - adjacent to,
 settlement land, remain substantially unaltered as to quality, quantity and flow rate;
- a First Nation shall not use such waters so as to substantially alter quality, quantity and flow rate, except to the extent authorized under the FA (and in conformity with any water licence granted to the First Nation); and
- the Yukon Water Board can only grant a licence or permit interfering with this right if no reasonable alternative exists, notice is given, and compensation is payable.

A First Nation may apply to the Yukon Water Board for compensation from a person not licensed by the Board and using waters under laws of general application. The Board may order compensation where the use substantially alters water quality, quantity or flow rate.

A Yukon First Nation may bring certain water use disputes to the Board under the FA.

If the Yukon Water Board wishes to grant a licence (in any drainage basin in the Yukon Territory) that would substantially alter water quality, quantity or flow rate – and adversely affect a traditional use by a Yukon Indian person in that person's traditional territory – the Board must give the First Nation notice and consider alternatives.

A licensee who substantially alters the quality, quantity or flow rate of water contrary to law – and causes loss or damage arising from interference with a traditional water use by a Yukon Indian Person in that person's traditional territory – shall be liable to pay compensation under the FA.

Rules on compensation for water use are set out in the FA.

FISH AND WILDLIFE

ADMINISTRATIVE BODIES

The Renewable Resources Councils are a primary instrument for local renewable resources management in each First Nation's traditional territory. These powers relate generally to forestry, and fish and wildlife management. Please see 1.1.3 for further information.

The Fish and Wildlife Management Board (established under the Umbrella Final Agreement) will be the primary instrument for managing fish and wildlife in the Yukon. The Board may make recommendations to government, First Nations and Renewable Resource Councils on all matters related to fish and wildlife management. This includes such matters as: legislation, research, policies and programs.

The FAs also call for a Salmon Sub-committee of the Board to be established as the main instrument of salmon management in the Yukon. Please see 1.1.3 for further information.

GENERAL

(Umbrella Final Agreement: Chapter 16)

Yukon Indian people have the right to harvest for subsistence within their First Nation's traditional territory on Crown land where a right of access exists, subject to the FA.

The FAs place specific limitations on those exercising fish and wildlife rights under the exercise of fish and wildlife rights under the FAs. Conservation, health and safety legislations also limit the scope of these rights. Nothing in the FAs:

- confers ownership rights in fish or wildlife;
- grants Yukon Indian people any commercial rights over migratory game birds not authorized by legislation; and

- prevents any person from killing fish and wildlife in an emergency. Any such kill must be reported as required by the Fish and Wildlife Management Board.

Yukon residents and others may harvest fish and wildlife (in accordance with legislation) unless the FA specifically states otherwise.

In cases of conflicts between the FA fish and wildlife provisions and certain international agreements, the international agreements prevail.

Harvesting and management of fish and wildlife within national parks must be done in accordance with the *National Parks Act*. These issues are also subject to the Special Management Area rules, the Inuvialuit Final Agreement and to specific provisions in the FAs.

Subject to other provisions of the FAs, each First Nation may manage, allocate and regulate the exercise of fish and wildlife harvesting rights, within traditional territory, by Yukon Indian people and members of a transboundary claimant group (where consistent with regulation of those rights by government).

Yukon Indian people generally have the right to harvest for subsistence within a First Nation's traditional territory on settlement land. The FAs describe any exceptions. The FAs also set out the rights of Yukon Indian people to trade and sell fish and wildlife products harvested under this right.

Note: In the Nacho Nyak Dun FA, the traditional territory does not include the Primary Use Area necessary to give effect to certain provisions of the Gwich'in Transboundary Agreement.

Government will not impose fees or taxes on Yukon Indian people relating to permits or licences to harvest under:

- subsistence harvest;
- total allowable harvest; or
- total allowable catch provisions of the FAs.

Subject to the FAs, Yukon Indian people will comply with laws of general application when participating in resident or commercial harvesting. However, Yukon Indian people have the right to use leg-hold drowning sets for furbearer harvesting unless government determines that such sets are inhumane.

Each FA sets out the manner in which Yukon Indian people and other harvesters will share the total allowable harvest. The Fish and Wildlife Management Board and the Renewable Resources Councils may establish and modify total allowable harvests for freshwater fish or wildlife populations in the Yukon.

No person shall waste edible fish or wildlife products, except as authorized under laws of general application.

1.5.7.1 FISHERY

(Umbrella Final Agreement: Chapter 16)

Government reserves the right to manage the fishery and determine who may fish in water bodies adjacent to the waterfront right-of-way. This right of government is subject to the FAs, and notwithstanding First Nation ownership of beds of water bodies.

A First Nation owning the bed of a water body has the exclusive right to fish in that bed where there is no adjacent waterfront right-of-way, unless otherwise indicated in the FA.

The FAs may set out special freshwater fish harvesting rights for Yukon Indian people. The Teslin Tlingit, Champagne and Aishihik and Vuntut Gwitchin FAs all contain special rights.

1.5.7.2 FURBEARERS

(Umbrella Final Agreement: Chapter 16)

The FAs describe the manner in which government, Renewable Resource Councils, the Fish and Wildlife Management Board and First Nations participate in the regulation, management and use of furbearers. FAs set trapline allocations for the First Nations.

1.5.8 ENVIRONMENTAL ASSESSMENT

The Yukon Development Assessment Board will assess projects in the Yukon Territory from an environmental and socio-economic perspective. Please see section 1.1.3 for further information.

FAs contain no special provisions relating to environmental assessments on federal lands in the Yukon.

1.5.9 ECONOMIC DEVELOPMENT

(Umbrella Final Agreement: Chapter 22)

The parties to each FA will develop a plan for Yukon Indian people to take advantage of economic development opportunities. This will take place after an implementation plan for the FA is completed.

FAs consider economic opportunities for Yukon Indian people at facilities related to heritage resources. (Umbrella Final Agreement: Chapter 13)

The FAs address economic opportunities for First Nations in forest resources. Under finalized FAs, First Nations have first

rights of refusal on fixed term contracts for silviculture (forest care and development) within their traditional territories. (Umbrella Final Agreement: Chapter 17)

The FAs provide for specific economic measures addressing, among other things, participation by Yukon Indian people in harvesting activities.

The FAs set up a process for allocating licences and other authorizations, to First Nations, for outfitting, commercial fishing other than salmon, or other uses of natural resources.

Certain areas (such as national parks) may be excluded from some economic development measures under the FAs.

